COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSLYVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

March 31, 2022

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Secretary Smith,

Today, we are introducing the "Resilient and Energy Efficient Historic Properties Amendment Act of 2022." This legislation would make several critical changes to how applications for energy resiliency and energy- and water-efficiency upgrades at properties within historic districts are to be considered by the Historic Preservation Review Board ("HPRB").

Addressing climate change is the most critical environmental, public health, and humanitarian challenge of our time. Here in the District, residents are already experiencing the effects of climate change, including increases in the frequency and severity of major weather events, including flooding, year after year of record-breaking extreme heat, reductions in the District's air quality, and more. These effects have a direct, meaningful effect on the health, safety, and quality of life of those living the District, with the greatest impact on our most vulnerable residents. Thus, it is critical that we do all we can to mitigate the effects of climate change and enhance the District's climate resiliency work; those efforts must begin with reducing our contributions to the greenhouse gas emissions that are causing climate change.

Buildings, whether residential, institutional and government, or commercial and industrial, account for a staggering amount of the District's greenhouse gas emissions; in 2015, buildings accounted for 74% of the District's total greenhouse gas output.[1] That building energy use plays such an outsized role in our emissions stems from the fact that the District, unlike other states, is an entirely urban jurisdiction, but also that we source a significant portion of our energy for

[1] "CleanEnergy DC. The District of Columbia Climate and Energy Action Plan." Department of Energy & environment, August 2018 (available at: https://doee.dc.gov/sites/default/files/dc/sites/ddoe/page_content/attachments/Clean%20Energy%20DC%20-%20Summary%20Report_0.pdf).

electricity, heating, and cooking from the burning of fossil fuels. In fact, from January 1 through June 30, 2021, Pepco's standard offer fuel mix included just 7.0% renewable energy sources; 59.5% came from natural gas or coal.[2] A crucial step in reducing the District's carbon footprint is increasing the amount of our energy that is procured from renewable energy resources, such as wind and solar.

With that in mind, the District has established a Renewable Portfolio Standard ("RPS"), which requires District electricity suppliers to provide a certain, growing proportion of energy from renewable energy sources. The District has accelerated RPS in recent years, most recently in the Clean Energy DC Omnibus Amendment Act of 2018, which increased the RPS to 100% by 2032, set a solar energy carve out of 10% by 2041, and limited the area in which Renewable Energy Credits may be purchased to the PJM Market Region (which includes about a dozen states within and just beyond the Mid-Atlantic region, and means more of our energy must be locally sourced). Critical to meeting these goals, however, is ensuring there are sufficient renewable energy resources—and, in particular, solar—to meet the Act's requirements.

The Public Service Commission's more recent Renewable Energy Portfolio Standards Report[3] found that there are currently 11,40 solar systems that count towards the solar carve out in the Clean Energy DC Omnibus, with 8,661 of those systems located within the District; the estimated total capacity of these systems is approximately 165.0 megawatts. Although this represents over three times the solar capacity at the time the District established RPS in 2011, this capacity is still short of what is needed to keep on pace with meeting our RPS solar carve out requirements.[4] While we have made great progress, we must do more to bring online new solar; and, that work becomes more difficult as time passes, as many of the properties with owners inclined to install solar or where installing solar is easier or more affordable have already done so.

Another critical component to reducing our buildings' carbon footprint is ensuring properties are weatherized and energy efficient. The District has taken a number of steps to address this issue, including setting energy- and water-efficiency for appliances and fixtures, providing subsidies and rebates for weatherization retrofits and appliance upgrades, and establishing programs, such as Solar For All, that help residents reduce or even eliminate the amount of energy they procure

---

[2] As of the date of this legislation's introduction, the Environmental Fuel Source Information for January 1, 2021, through January 30, 2021 was the most recent fuel source data available. The full report may be accessed at: https://www.pepco.com/SiteCollectionDocuments/Pepco%20DC%20Enviro%20Fuel%20Mix%20Insert_11.21_ADA.pdf.

[3] The 2021 report for 2020 is available here: https://dcpsc.org/PSCDC/media/Images/2021-RPS-report-FINAL-(1).pdf.

[4] The PSC's report notes that the District would need 178.2 MW of capacity by 2021 for solar to provide 2.5% of electricity solid, as required; thus, the District is approximately 13.2 MW short.

from "dirty" energy sources to meet their home energy needs. The District took perhaps its most meaningful step forward in this work in the CleanEnergy DC Omnibus Amendment Act, which established the District's Building Energy Performance Standards ("BEPS"). BEPS requires that building owners to meet certain energy performance standards; these standards vary based on building size, and apply on a rolling basis, with the District's largest buildings required to come into compliance years before our mid-sized and smallest buildings.

Critical to all of our work to address the outsized role buildings play in the District's greenhouse gas emissions is reducing barriers or burdens that prevent homeowners, developers, and business owners from including energy resiliency and energy- and water-efficiency upgrades at their properties. One barrier that some homeowners face when seeking to implement these upgrades, including to install solar, are restrictions stemming from their property's location in a historic District. There are currently seventy historic districts in the District, the vast majority of which encompass large swaths of residential property. Homeowners living in a historic district face a number of limitations on how they may upgrade or otherwise change historic elements of their property, including exterior elements that are visible from the roadway. Application of these standards is at the discretion of the Historic Preservation Review Board ("HPRB"), which has a legislative mandate focused on the preservation of the character of historic properties and communities; their mandate does not include consideration of other compelling factors, such as how a proposal might promote a property's resiliency or energy-efficiency.

Unfortunately, this means that District's historic preservation efforts may be put at odds with property owner's efforts to make critical climate-focused upgrades to their property—or, where upgrades have been permitted, those proposals have often been restricted in their scope or siting, where those changes may result in a diminished benefit to the District, in terms of meeting our RPS and climate goals.[5] It is also worth noting that it is unclear how many property owners within historic districts decide to not even pursue these upgrades due to the impression that their request will be denied. In cumulative, this approach to historic preservation results in neighborhood aesthetics and historic character being given absolute precedence over strategies to mitigate climate change—and the environmental and public health impacts that come with it.

With this in mind, in December 2019, HPRB updated its sustainability guidelines.[6] These new guidelines were issued just two months after a widely-

---

[5] Of note, these decisions make affect installations of solar panels, green roofs , rain barrels, and other critical sustainability infrastructure, building energy efficiency upgrades, such as HVAC and ventilation upgrades, and building weatherization enhancements, among other upgrades.

[6] Sustainability Guide for Older and Historic Buildings, DC Historic Preservation Review, 19 Dec. 2019. (available at: https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/SustainabilityGuidelines-October24-2019-small.pdf).

reported on HPRB hearing in which the Board denied a resident's application for a solar panel installation on their property, located in a historic district with a front-facing sloped roof;[7] HPRB's determination was in line with the Board's practice of denying applications for visible solar installations in historic Districts. While the 2019 sustainability guidelines were a step in the right direction, those standards still permit HPRB to scale back upgrades based on the size, location, and visibility of the installation, and HPRB still retains authority to deny applications for critical sustainability upgrades based on these considerations. The urgency of our work to address climate change demands that we take action to ensure these upgrades can move forward—but, as much as possible, in a manner that preserves the historic character of these properties.

This legislation would address this issue by making several small but meaningful changes to how HPRB is to review applications for resiliency or efficiency upgrades at properties within historic districts, including solar panels, electric vehicle charging or make-ready infrastructure, heat pumps, and energy- and water-efficiency upgrades, including appliances, fixtures, insulation, ventilation systems, windows and door upgrades, and other similar design elements. Specifically, the legislation clarifies that such upgrades are to be considered by HRPB as within the character of a historic district; however, under the bill, HPRB would retain the authority to propose alternatives to a proposed upgrade, where the alternative would provide the same energy resiliency or energy- and water-efficiency benefits as the upgrade proposed in the property owner's application. Of note, this new policy would apply only to properties within historic districts, not those properties designated as historic landmarks. The changes effectuated in this legislation will help ensure that these critical investments in energy resiliency and energy- and water-efficiency can move forward at these properties, while retaining the authority of HPRB to provide guidance on how those upgrades can be implemented such that they do not alter the property's historic character.

Should you have any questions about this legislation, please contact Legislative Director Michael Porcello at mporcello@dccouncil.us or (202) 724-8062.

Thank you.

Best,

Councilmember Mary M. Cheh

Councilmember Charles Allen

[7] Alpert, David, *Grappling with the climate crisis, DC's preservation board rejects front-facing solar panels*, Greater Greater Washington, 08 Oct. 2019 (available at: https://ggwash.org/view/74166/dc-preservation-hprb-denies-front-facing-solar-panels-takoma-climate-crisis).

Councilmember Charles Allen

Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Historic Landmark and Historic District Protection Act of 1978 to require that the Historic Preservation Review Board consider, for a building or structure in an historic district, proposed alterations that include the installation or construction of design elements promoting energy resiliency and water and energy efficiency as within the character of the historic district; provided that the Board may propose reasonable alternatives that produce energy resiliency or water and energy efficiency benefits that are substantially similar to the proposed design element.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Resilient and Energy Efficient Historic Properties Amendment Act of 2022".

Sec. 2. The Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Official Code § 6-1101 *et seq.*), is amended as follows:

(a) Section 2(b)(1) is amended as follows:

(1) Subparagraph (B) is amended by striking the phrase "district; and" and inserting the phrase "district while promoting energy resiliency and water and energy efficiency at these properties; and" in its place;

(2) Subparagraph (C) is amended by striking the phrase "district; and" and inserting the phrase "district while promoting energy resiliency and water and energy efficiency at these properties; and" in its place;

(b) Section 3 (D.C. Official Code §6-1102) is amended as follows:

(1) New paragraphs (4B) and (4C) are added to oread as follows:

"(4B) "Electric vehicle charging infrastructure" means the equipment used to charge the battery or other energy storage device of an electric vehicle.

"(4C) "Electric vehicle make-ready infrastructure" means the electrical infrastructure, structural upgrades, and other equipment necessary for the installation and operation of electric vehicle charging infrastructure.

(2) A new paragraph (10B) is added to read as follows:

"(10B) "Solar panels" shall include:

"(A) Solar panels mounted on the exterior of a building or structure; and

"(B) Ground-mount solar panels, where there is a building or structure elsewhere on the property."

(c) Section 6(f) (D.C. Official Code § 6-1105) is amended to read as follows:

"(f)(1) No permit shall be issued unless the Mayor finds that:

"(A) Such issuance is necessary in the public interest;

"(B) Failure to issue a permit will result in unreasonable economic hardship to the owner; or

"(C) For a building or structure in an historic district, the alteration includes the installation or construction of design elements promoting energy resiliency and water and energy efficiency, including solar panels, electric vehicle charging or make-ready infrastructure, heat pumps, or energy or water efficiency upgrades, or weatherization of the building or structure; provided, that:

"(i) The Historic Preservation Review Board may propose reasonable alternatives that produce energy resiliency or water and energy efficiency benefits substantially similar to the proposed design element; and

"(ii) The Mayor may limit the scope of work allowed under the permit to the design elements listed in this subparagraph where she determines that other alternations included in the application are not necessary in the public interest.

"(2) For permits issued under paragraph (1)(C), applicants shall make best efforts to protect and preserve historic elements."

(d) Section 8(f) (D.C. Code § 6-1107) is amended to read as follows:

"(f)(1) The permit shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the design of the building and the character of the historic district or historic landmark are incompatible; provided, that:

"(A) In any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor may deny a construction permit entirely where he finds that any additional construction will be incompatible with the character of the historic district or historic landmark; and

"(B) The Mayor shall find the following design elements compatible with the character of all historic districts; provided, the Historic Preservation Review Board may propose reasonable alternatives that produce energy resiliency or water and energy efficiency benefits that are substantially similar to the proposed design element:

"(i) Solar panels;

"(ii) Electric vehicle charging or make-ready infrastructure;

"(iii) Heat pumps;

"(ii) Design elements designed to increase the energy or water efficiency of the building or structure, including appliances, fixtures, insulation, ventilation systems, windows and door upgrades, and other design elements.

"(2) Notwithstanding a finding of incompatibility, the Mayor may find that issuance of the permit is necessary to allow the construction of a project of special merit.

(e) Section 9a(f) (D.C. Official Code § 6-1108.01(f)) is amended to read as follows:

"(f)(1) No permit shall be issued unless:

"(A) The Mayor finds that the issuance of a permit is necessary in the public interest. Upon making such a finding, the Mayor shall issue an order defining the nature of the approved conceptual design and specifying any further consultation the Mayor considers appropriate prior to the submission of the application required in § 6-1104(b), § 6-1105(b), § 6-1106(b), or § 6-1107(b); or

"(B) For public safety facilities within a historic district, the renovation or new construction would include the installation of design elements that produce energy resiliency or water and energy efficiency benefits, including solar panels, electric vehicle charging or make-ready infrastructure, heat pumps, energy or water efficiency upgrades, or weatherization of the building or structure; provided, that:

"(i) The Historic Preservation Review Board may propose reasonable alternatives that produce energy resiliency or water and energy efficiency benefits that are substantially similar to the proposed design element; and

"(ii) The Mayor may limit the scope of work allowed under the permit to the design elements listed at paragraph (1)(B) of this subsection where she determines that other design elements included in the application are not necessary in the public interest.

"(2) For permits issued under paragraph (1)(B), the applicant shall make best efforts to protect and preserve historic elements."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(l) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(l)), and publication in the District of Columbia Register.